

Under the provisions of Section 413.031 of the Texas Workers' Compensation Act, Title 5, Subtitle A of the Texas Labor Code, effective June 17, 2001 and Commission Rule 133.305, titled Medical Dispute Resolution-General, and 133.307, titled Medical Dispute Resolution of a Medical Fee Dispute, a review was conducted by the Medical Review Division regarding a medical fee dispute between the requestor and the respondent named above.

I. DISPUTE

1. a. Whether there should be additional reimbursement of \$2,966.63 for date of service 02/23/01.
- b. The request was received on 02/19/02.

II. EXHIBITS

1. Requestor, Exhibit I:
 - a. TWCC-60 and Letter Requesting Dispute Resolution
 - b. UB-92
 - c. TWCC 62 forms
 - d. Other carrier EOB(s)
 - e. Medical records
 - f. Any additional documentation submitted was considered, but has not been summarized because the documentation would not have affected the decision outcome.
2. Respondent, Exhibit II:
 - a. TWCC-60 and Undated Response to a Request for Dispute Resolution
 - b. UB-92
 - c. TWCC 62 forms
 - d. Any additional documentation submitted was considered, but has not been summarized because the documentation would not have affected the decision outcome.
3. Per Rule 133.307(g)(3), the Division forwarded a copy of the requestor's 14-day response to the insurance carrier on 06/13/02. Per Rule 133.307 (g)(4), the carrier representative signed for the copy on 06/17/02. The response from the insurance carrier was received in the Division on 06/20/02. Based on 133.307 (i) the insurance carrier's response is timely.
4. Notice of Medical Dispute is reflected as Exhibit III of the Commission's case file

III. PARTIES' POSITIONS

1. Requestor: Letter dated 05/28/02:
“... ‘ the explanation of benefits **shall include the correct payment exception codes...**’
The Carrier provided individual payment exception codes of ‘H’ for *each* line item of billed charges...several of the billed charges had a maximum allowable reimbursement...and were not reimbursed by the Carrier for the ‘MAR’ amounts...the enclosed EOBs evidence that the Carrier does reimburse per the TWCC Fee Guideline for billed charges which have a ‘MAR’.... The enclosed EOB’s establish that a fair and reasonable reimbursement by other Carrier’s is greater than that provided by the Carrier in this instance for same or similar procedures....(Provider) charges...services at a fair and reasonable rate...these rates are based upon a comparison of charges to the Carriers and the amount of reimbursement received for same or similar services.... Based upon the requirements of Texas Administrative Code Section 130.304, a methodology may be developed to establish that a ‘fair and reasonable’ reimbursement amounts to ensure proper payment.”
2. Respondent: Undated MDR Response:
“The EOR used has the H exception letter and advises that a partial payment for the listed services pending further review. A fair and reasonable audit of the charges was done by ...based upon fair and reasonable charges of other HCP in the zip code area.... The HCP alleges that no EOB was issued: however attached are copies of the EOBs that were sent out.

IV. FINDINGS

1. Based on Commission Rule 133.307(d) (1&2), the only date of service eligible for review is 02/23/01.
2. The provider billed a total of \$5,933.06 for the disputed date of service per the TWCC 60.
3. The carrier reimbursed a total of \$2,966.53 per the TWCC 60 and the denial EOB(s) are “H – PARTIAL PAYMENT FOR THE LISTED SERVICE PENDING FURTHER REVIEW.” and “P – PER ATTACHED F&R REVIEW AN OVERPAYMENT WAS MADE. LETTER OF REFUND WITH EOB AND SENT TO BUSINESS OFFICE.”
The provider accepts the denial of “fair and reasonable” in the letter dated 05/28/02. The letter dated 07/31/01 written by the (Provider)’s collection department states, “**The explanation of benefits recently received, has been reviewed and we find this claim to be paid incorrectly. (Provider) charges are fair and reasonable, and we expect payment at 100% of those billed charges.**” Therefore, this dispute will be reviewed as fair and reasonable.
4. The amount in dispute per the TWCC-60 for the disputed date of service is \$2,966.53.
5. This decision is being written based on the documentation that was in the file at the time it was assigned to this Medical Dispute Resolution Officer.

6. The Requestor submitted UB-92s for ambulatory surgical services for date of service 02/23/01. The bill in dispute is broken down into operating room services, iv therapy, supplies, recovery room charges, etc. However, the total is considered the facility fees (what the facility charged for providing the facility, equipment and supplies in order for the surgical procedure to be done).

V. RATIONALE

The medical documentation indicates the services were performed at an ambulatory surgery center. Commission Rule 134.401 (a)(4) states ASCs, “shall be reimbursed at a fair and reasonable rate...” (bolded for emphasis)

The Medical Fee Guidelines General Instructions (VI) discuss that if a MAR value has not been established for a CPT code, reimbursement shall be, “...at the fair and reasonable rate.” ASC(s) do not have a MAR value.

Section 413.011(b) of the Texas Labor Code states, “Guidelines for medical services must be fair and reasonable and designed to ensure the quality of medical care and to achieve effective medical cost control. The guidelines may not provide for payment of a fee in excess of the fees charged for similar treatment of an injured individual of an equivalent standard of living and paid by that individual or by someone acting on that individual’s behalf. The Commission shall consider the increased security of payment afforded by this subtitle in establishing the fee guidelines.”

Because there is no current fee guideline for ASC(s), the Medical Review Division has to determine what would be fair and reasonable reimbursement for the services provided. The provider did submit EOB(s) from the carrier. The EOB(s) submitted from the carrier did not indicate what procedure or services were performed. Rule 133.307 (g) (3) (D) places certain requirements on the provider when supplying documentation with the request for dispute resolution. The provider is to discuss, demonstrate, and justify that the payment amount being sought is fair and reasonable. Commission Rule 133.304 (i)(1-4) places certain requirements on the carrier when reducing the billed amount to fair and reasonable. Regardless of the carrier’s methodology or lack thereof, or a timely or untimely response, the burden remains on the provider to show that the amount of reimbursement requested is fair and reasonable. The provider’s documentation is EOB(s) or is based on EOB(s). The willingness of carriers to reimburse at or near the billed amount does not necessarily document that the billed amount is fair and reasonable and does not show how effective medical cost control is achieved, a criteria identified in Sec. 413.011(b) of the Texas Labor Code. Based on the evidence available for review, the provider did not meet the criteria of Rule 413.011 (b) or Rule 133.307 (g) (3) (D). The provider’s documentation fails to justify or demonstrate that the fees requested are fair and reasonable. Therefore, no further reimbursement is recommended.

The above Findings and Decision are hereby issued this 12th day of August 2002.

Donna M. Myers, B.S.
Medical Dispute Resolution Officer
Medical Review Division